

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Dublin Division

IN RE:)	Chapter 13 Case
)	Number <u>02-30008</u>
Katrina Robinson)	
)	
Debtor)	
_____)	FILED
)	2003 MAR 14 P 2:53
Katrina Robinson)	
)	
Movant)	
)	
vs.)	
)	
Citizens Bank & Trust Company)	
)	
Respondent)	

ORDER ON MOTION FOR SUBSTITUTION OF COLLATERAL

Creditor, Citizens Bank & Trust Company ("CB&T") objects to debtor's motion to substitute collateral. Because the debtor does not have an interest in the insurance proceeds, the proceeds are not property of the debtor or debtor's estate and CB&T is entitled to them.

The Court has jurisdiction to determine this motion under 28 U.S.C. § 157(a) & (b)(2)(A) and 28 U.S.C. §1334.

The facts are as follows. On March 6, 2001, Johnny Coates and Katrina Robinson ("debtor") signed a Promissory Note, Disclosure and Security Agreement ("promissory note") in favor of CB&T,

pledging as collateral to secure the payment of the debt a 1998 Chevrolet Malibu ("car"). The debtor filed for bankruptcy relief on January 9, 2002. CB&T timely filed a secured claim in the amount of \$5,851.62. The balance remaining on the claim as of the day of the hearing was \$5,161.16. CB&T's claim was secured by the car. The car was insured by the Equity Insurance Company. The car is titled to both Johnny Coates and the debtor. However, the insurance policy only names Johnny Coates as the insured, and CB&T as the loss payee. The debtor is listed as an excluded driver under the policy. On May 22, 2002, the car was completely destroyed in an accident. The total amount due under the adjusted casualty loss is \$5,270.20. On July 11, 2002 the debtor filed an amended chapter 13 plan where CB&T's claim would be satisfied from the insurance proceeds. The plan as amended was confirmed on August 20, 2002. On September 16, 2002 the debtor filed the current Motion for Substitution of Collateral. The debtor seeks to use the \$5,270.20 insurance proceeds to purchase a replacement vehicle and give CB&T a first lien on the replacement vehicle. CB&T objects on three grounds.

First, CB&T argues that because the confirmed plan provides for the insurance proceeds to be paid to them in satisfaction of the debt the issue is res judicata and the debtor may not seek to modify it. Second, CB&T argues that because the debtor is not an insured party, the insurance proceeds are not property of the estate but property of CB&T. Lastly, CB&T argues

that even if the debtor has an interest in the proceeds, the debtor would be entitled to only half of the proceeds because Johnny Coates is entitled to the other half and thus CB&T would be at least entitled to receive the half belonging to Coates. Because I agree with CB&T's second argument in principle, I do not address the remaining two.¹

CB&T relies in part on In Re: Hasty for its argument that the insurance proceeds are not property of the debtor's estate. In Re: Connie Frazier Hasty, Ch. 13 Case No. 99-41596 (Bankr. S.D. Ga. Savannah Division, February, 25, 2000) (L. Davis). The debtor in Hasty, like here, filed a Motion to Substitute Collateral held to secure a loan. The Court in Hasty focused on the terms of the insurance policy to determine whether the proceeds were property of the debtor's estate. id. (citing In Re Suter, 181 B.R. 116 (Bankr. N.D. Ala. 1994) (because AmSouth was the loss payee of the insurance policy, the proceeds of the policy are not property of the estate); In Re Coker, 216 B.R. 843 (Bankr. N.D. Ala. 1997) (proceeds from insurance policy were property of the estate because the lender's was not listed as loss payee under the policy).) These cases hold that only if the terms of the policy favor the debtor and he retains an interest in the insurance proceeds, then the proceeds are property of the estate. Id. These cases predate the Eleventh

¹See generally Joan Henderson, Bankruptcy Disaster Relief: A Chapter 13 Debtor's Right to Use Insurance Proceeds to Repair or Replace Collateral, 35 Gonz. L.Rev. 21 (1999) (If the debtor does not own the insurance proceeds then the creditor may veto the debtor's use of the proceeds).

Circuit Court of Appeals opinion in Telfair v. First Union Mortgage Corp., 216 F.2d 1333 (11th Cir. 2000). Telfair held that after confirmation all the property of the estate vests in the debtor and only the property necessary for execution of the plan remains as property of the estate. Here the debtor's plan has already been confirmed, therefore, all of the property of the estate vested in the debtor except payments from future income necessary to fund the plan.

Bankruptcy does not limit nor does it create or expand property interests that do not exist outside of bankruptcy. Butner v. U.S., 440 U.S. 48, 99 S.Ct. 914, 50 L.Ed.2d. 136 (1979). Therefore, if the debtor here has an interest in the insurance proceeds outside of bankruptcy she will retain such interest. However, if the debtor held no interest in the insurance proceeds outside of bankruptcy then she has no interest or right to such proceeds within the context of a bankruptcy case. See Suter, 181 B.R. at 119.

Here, the debtor is neither an insured party under the policy nor a named loss payee. In fact, she is listed as the only excluded driver. See insurance policy Items 1, 5 and the excluded drivers provision. The policy's loss payable clause states that the proceeds shall be paid "to you (insured party) and the loss payee (CB&T) shown in the Declarations". No where, other than under the Excluded Drivers section, is the debtor mentioned in the policy of

insurance. Under the terms of the policy the insured and the loss payee are the only ones entitled to payment. Therefore, only Johnny Coates (the insured party) and CB&T (the loss payee) hold an interest in the insurance proceeds. See Suter, 181 B.R. at 119 (The named beneficiary of an insurance policy is the owner of the policy proceeds).

Since the terms of the insurance policy only give Johnny Coates and CB&T an interest in the proceeds, the debtor holds no interest. Therefore, the insurance proceeds were not property of the debtor's estate prior to confirmation. See Hasty, Case No.99-41596; Suter, 181 B.R. at 119-120. Post confirmation the insurance proceeds were not property of the debtor. See Telfair, 216 F.2d 1333. Since the insurance proceeds were not property of the debtor or the estate, the debtor may not use the proceeds to purchase a new vehicle.

The insurance proceeds are payable to Johnny Coates and CB&T "as interests may appear". CB&T holds a perfected security interest in the insurance proceeds. See Hasty, Case No. 99-41596. The promissory note signed by Coates states "...I will name you as loss payee on any such policy so that any benefits arising from the insured risks will be first paid to you for application toward the secured obligations." ("You" means CB&T). As loss payee under the policy, CB&T, is entitled to the proceeds to the extent of its interest. See Suter 181 B.R. at 119 (proceeds were payable to the

lender at least to the extent of the lender's interest in the property insured.) The insured, Johnny Coates, is entitled to any remaining proceeds after CB&T's claim is satisfied. See Beasley v. Agricredit Acceptance Corporation, 224 Ga. App. 372, 480 S.E. 2d 257 (1997) (holding that the secured creditor had a contractual right to the insurance proceeds by virtue of the insurance policy and that the insured had an interest in the proceeds only to the extent that they exceeded the debt owed to the secured creditor.)

Accordingly it is hereby ORDERED that the Motion for Substitution of Collateral is DENIED.

JOHN S. DALIS
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 14th Day of March, 2003.